

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED
HARRISBURG, PA

JUL 31 2002

MARY E. D'ANDREA, CLERK
Per MDW

KIM SMITH,

Plaintiff,

v.

JAMES MORGAN, et al.,

Defendants.

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Civil No. 1:01-0817

(Judge William W. Caldwell)

(Magistrate Judge Malachy E. Mannion)

**SUPPORTING DOCUMENTS TO THE CORRECTIONS DEFENDANTS'
MOTION TO STRIKE PLAINTIFF'S MOTION TO COMPEL**

The Corrections Defendants, by and through their undersigned attorney,
pursuant to Pa.MDLR 5.1(f) hereby file and serve the following documents in
support of their Motion to Strike Plaintiff's Motion to Compel:

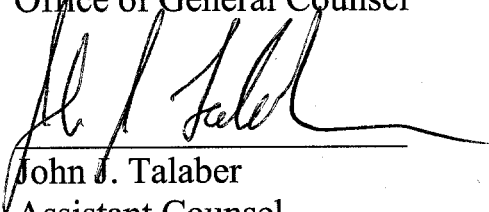
Exhibit A Memorandum to John J. Talaber from SCI-Coal Township
Superintendent's Assistant Kandis Dascani dated April 10, 2002.

Exhibit B Memorandum to Plaintiff from Kandis Dascani dated April 16, 2002.

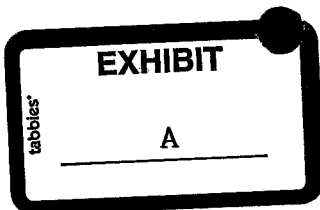
Exhibit C Corrections Defendants' response to Plaintiff's First Request for Production of Documents.

Respectfully submitted,
Office of General Counsel

BY:


John J. Talaber
Assistant Counsel
PA Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
Pa. No. 83279

Dated: July 31, 2002



COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
State Correctional Institution at Coal Township
(570) 644-7890
April 10, 2002

SUBJECT: Kim Smith, CT-2162

TO: Mr. John Talaber
Assistant Counsel

FROM: 
Kandis K. Dascani
Corrections Superintendent's Assistant

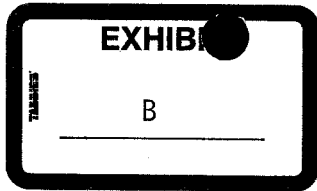
In reference to your letter faxed yesterday to be hand delivered to Kim Smith, CT-2162, I personally delivered the letter to him on April 9, 2002, at his work place in the kitchen. As we discussed it was decided that Kim Smith would be sent to the library and be permitted to have one copy of his documents made free of charge. Upon talking to Unit Manager Smith today, I was advised that the copier in the library is broken. After discussion with Ray Smith we decided to permit Kim Smith to go up into the Unit Manager's office area with Mr. Ray Smith supervising him. Ray Smith's unit clerk made the copies as Kim Smith took out the staples and gave him the paperwork. Upon completion of the copying, the copies were hand carried to my office.

Enclosed please find the copies that were made. If I can be of further assistance in this matter, please contact me.

Enclosure

KKD/kd

cc: File



COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
State Correctional Institution at Coal Township
(570) 644-7890
April 16, 2002

B

SUBJECT: Response to Correspondence

TO: Kim Smith, CT-2162
D-219

A handwritten signature in cursive script, reading "Kandis K. Dascari".

FROM: Kandis K. Dascari
Corrections Superintendent's Assistant

In response to your correspondence in which you enclosed an affidavit to be signed for your 500 numbered pages to be copied, as the copies were completed with you being present there is no need for an affidavit. Your request is therefore considered moot.

cc: Mr. Talaber
File

Dear Ms. Dascania/ M. Smith/ John J. Talaber;

This is in regards to your April 8, 2002 letter recieved by Kim Smith on April 10, 2002 enclosed you will find a affidavit by Kim Smith for anyone of the above parties to sign at the time I give them 500 numbered pages to be copied for the Correctional defendants attorney this is to insure that none of the documents gets lost or destoried, in the process of coping them.

Please be advised at the time that these documents are turned over it will be required for such person to sing the affidavit to support that all these documnets were turned over to them in case anything was to happen.

Ms. Dascani please advise me when and to whom I'm to turn over these numbered pages to for coping.

Sincerely Your
Kim Smith

Date 4-10-02

This affidavit is to be returned to Kim Smith and signed before he will turn over his documents, to institutional staff. If refusing to do such then it will interferr with the Correctional attorney and his ability to represent the Department of Correction and it employees.

Supervisors Assistant
Office

02 APR 10 PM 3:50

SOI Unit, Township

A F F I D A V I T

I Kim Smith turned over to namely Mr. Smith and Ms K. Dascani 500 numbered pages to be copied and returned to Kim Smith. Copy is to be sent to John J. Talaber Correctional Defendants Counsel. This is in compliance with a letter requesting such be done by April 12, 2002, under threat that he will file required document with the Court under Fed. R. Civ. P. 37 and seek attorney fees from petitioner for having to do so. I Kim Smith feels the same way regarding the Court order to have Kim Smith deposed.

I Mr./Ms/ _____ Staff at State Correctional Institution Coal Township Pa. 17866-1021 recieved from Kim Smith this _____ day of _____, 2002 500 pages of legal material, consisting of misconduct, request slips, grievances and other printed material to make one copy of such for John J. Talaber Assistant Counsel for the Department of Correctionpn defendants in order to have Kim Smith disposed, to to give his deposition.

- Docketed at number 1:01-0817 Production of Documents in The United States District Court for the Middle District of Pennsylvania.

Proof of Service

I Kim Smith certify that I turned over to Mr. Smith or Mr. Bassani a 500 numbered
paged document to copy for the defendants counsel. This act took place on or about April
11, 2002.

Signed by _____ or _____
on April 11, 2002.

John J. Falver Esq.

Office of the Clerk

Kim Smith

Witnessed by _____

EXHIBIT

C

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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JAMES MORGAN, et al.,

Defendants.

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: Civil No. 1:01-0817
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: (Judge William W. Caldwell)
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**DEFENDANTS' RESPONSE TO PLAINTIFF'S FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

The Corrections Defendants, by and through their undersigned attorney, John J. Talaber, Assistant Counsel for the Pennsylvania Department of Corrections, in accordance with Federal Rules of Civil Procedure 26 and 34, hereby respond to Plaintiff's informal Request for Production of Documents as follows:

1. *Please provide a copy of the DOC policy that terminates power in all state institutions RHU.*

1. Response: Objection. Defendants object to the request, pursuant to Fed.R.Civ.P. 34(b) due to Plaintiff's failure to set forth documents to be inspected with reasonable particularity; specifically, Defendants are unsure as to what would constitute "a policy that terminates power in all state institutions RHU." Further,

the Defendants object to this request, pursuant to Fed.R.Civ.P. 26(b)(1), in that this information does not appear to be relevant to the claims raised in the complaint nor does it appear the information is reasonably calculated to lead to the discovery of admissible evidence at time of trial. Further, after reasonable investigation, the Corrections Defendants are not aware of a document responsive to this request.

However, in a good-faith effort to conclude discovery issues in this matter, will produce for Plaintiff's examination and inspection the following items that may be relevant to Plaintiff's request: (1) memorandum from SCI-Smithfield Maintenance Manager Donald Reihart dated January 31, 2002 regarding the Diesel Generator Update; (2) Log Book Excerpts regarding when the SCI-Smithfield Generator did not properly start for the dates June 8, 2000, June 14, 2000, July 20, 2000, July 21, 2000, September 3, 2000, September 17, 2000, September 30, 2000, October 28, 2000, and November 16, 2000.

Additionally, the Corrections Defendants will produce for examination and inspection Standby Generator tests conducted at SCI-Smithfield for the following dates: (1) June 6, 2000; (2) June 13, 2000; (3) June 20, 2000; (4) July 18, 2000; (5) July 25, 2000; (6) July 29, 2000; (7) August 1, 2000 (8) August 9, 2000; (9) August 15, 2000; (10) August 22, 2000; (11) August 29, 2000; (12) September 5, 2000; (13) September 12, 2000; (14) September 19, 2000; (15) October 3, 2000; (16) October 7, 2000; (17) October 10, 2000; (18) October 17, 2000; (19) October

24, 2000; (20) October 31, 2000; (21) November 7, 2000; (22) November 14, 2000; (23) November 21, 2000; (24) November 28, 2000; (25) December 5, 2000; (26) December 12, 2000; (27) December 16, 2000; (28) January 2, 2001; (29) January 9, 2001; (30) January 13, 2001; (31) January 16, 2001; (32) January 23, 2001; (33) January 30, 2001; (34) February 6, 2001; (35) February 13, 2001; (36) February 21, 2001; and (37) February 27, 2001. The Corrections Defendants will produce for examination and inspection an excerpt from SCI-Smithfield employee Paul Hoffman's computer records for the period of 8/29/00 to 5/24/01 regarding maintenance concerns.

Plaintiff must initiate this process by submitting an inmate request to the Litigation Coordinator at SCI-Coal Township, Kandis Dascani. Plaintiff, at the meeting with Ms Dascani or her designee, will have the option to obtain copies of the documents at his expense; however, Plaintiff should note that charges for the photocopies would be in accordance with Department of Corrections Policy DC-ADM 003 and its Procedure Manual. Plaintiff may choose only the documents he wishes to copy.

2. *Please provide copies of all Maintenance reports, or repairs done in RHU H Block to plug sockets, and status of plug sockets in RHU, H Block.*

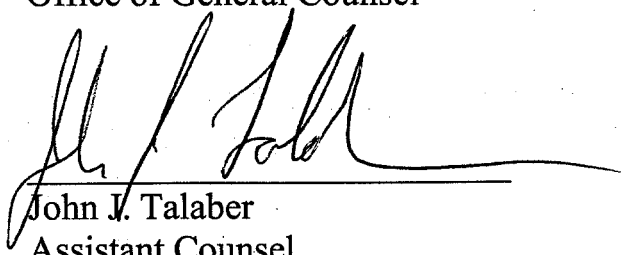
2. **Response:** See Response 1, *supra*.

3. *Provide "a copy of certain medical records as evidence to support his claim and to show that medical department (sic.) deferred from medical orders from x-ray personnel to send Kim Smith to orthopedic specialist, along with other issues that are present in medical records, like the medical staff at SCI-Smithfield knew their (sic). Was not power in cells and failed to do anything about it to secure Kim Smith (sic) health safety and the use of the C-PaP device. See Plaintiff's Motion to Compel (doc. 67), pp 1-2.*

3. **Response:** The Corrections Defendants will provide to Plaintiff for his review and/or copying all medical documents, correspondence reports, diagnostic test results and x-ray reports the Department of Corrections has in its possession. Plaintiff will be given a reasonable amount of time to examine and inspect the above-referenced documents. Plaintiff must initiate this process by submitting an inmate request to the Litigation Coordinator at SCI-Coal Township, Kandis Dascani. Plaintiff, at the meeting with Ms Dascani or her designee, will have the option to obtain copies of the documents at his expense; however, Plaintiff should note that charges for the photocopies would be in accordance with Department of Corrections Policy DC-ADM 003 and its Procedure Manual. Plaintiff may choose only the documents he wishes to copy, or submit a cash slip in the amount of two-hundred ten dollars (\$210.00) for the entire record.

Respectfully submitted,
Office of General Counsel

BY:



John J. Talaber
Assistant Counsel
Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
Attorney Id. No 83279

Date: July 31, 2002

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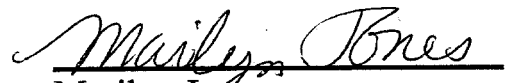
CERTIFICATE OF SERVICE

I undersigned hereby certifies that a copy of the Corrections Defendants' Response to Plaintiff's Request for Production of Documents in this matter was served upon the person(s) in the manner indicated below.

Service by first-class mail
addressed as follows:

Kim Smith, CT-2162
SCI-Coal Township
1 Kelley Drive
Coal Township, PA 17866-1020

James D. Young, Esquire
Lavery, Faherty, Young and Patterson, P.C.
301 Market Street
P.O. Box 1245
Harrisburg, PA 17108-1245


Marilyn Jones
Clerk Typist II

PA Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444

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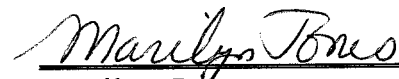
CERTIFICATE OF SERVICE

I undersigned hereby certifies that a copy of the Corrections Defendants' Supporting Documents to their Motion to Strike Plaintiff's Motion to Compel in this matter was served upon the person(s) in the manner indicated below.

Service by first-class mail
addressed as follows:

Kim Smith, CT-2162
SCI-Coal Township
1 Kelley Drive
Coal Township, PA 17866-1020

James D. Young, Esquire
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